

fair value (LTFV) investigation or any administrative review.¹

On November 27, 1995, the Complainants requested a panel review of the Final Results pursuant to Article 1904 of the North American Free Trade Agreement. On December 16, 1996, the Panel issued its decision in this matter.

In its decision, the Panel upheld the Department's assignment of dumping margins based on BIA, stating that there was substantial evidence in the administrative record to support the Department's determination in the *Final Results* that the Complainants' responses were misleading, evasive, and impeded the progress of review. The Panel also determined that the Department's decision to resort to BIA was in accordance with the broad discretion granted to it by section 776(c) of the Act.

The Panel disagreed with the Department's determination to assign a first-tier BIA rate to the Complainants, however, because the record indicated that the Complainants cooperated with the Department's requests for information in many respects. The Panel noted that the Department has previously assigned second-tier BIA rates in situations in which respondents were cooperative but failed to provide certain information. The Panel cited *Yamaha Motor Co., v. United States*, 910 F.Supp. 679 (CIT 1995), *Emerson Power Transmission Corp. v. United States*, 903 F.Supp. 48 (CIT 1995), and *NSK Ltd. v. United States*, 910 F.Supp. 663 (CIT 1995), in which the Department assigned second-tier BIA rates to respondents, in spite of substantial omissions and misrepresentations in their questionnaire responses.

The Panel also noted that the Complainants are small ranches that have only recently been required to maintain information for the purpose of filing income tax returns, as a result of a change in Mexican law, and that they each developed an accounting system solely for the purpose of responding to the Department's antidumping questionnaires. In light of these factors, the Panel found that Aguaje, Guacatay, and Toro "exhibited substantial cooperation and that any misleading or evasive information supplied by Complainants did not rise to the level of uncooperativeness required, under the Department's own precedents, to apply a first-tier analysis." See *Decision of the Panel in the Matter of Fresh Cut Flowers from Mexico, Final Results of*

Antidumping Duty Administrative Review (Panel Decision), December 16, 1996, at 86.

In assigning a second-tier BIA rate, the Panel considered the following options, in accordance with the Department's normal practice:² 1) the Complainants' rates from the LTFV investigation, if they were part of the investigation; 2) the "all others" rate from the investigation, if the Complainants were not part of the LTFV investigation; and, 3) the highest rate calculated in this review for any firm. As the second-tier BIA rate, the Panel chose 18.20 percent, the "all others" rate from the LTFV investigation, because none of the Complainants had participated in the LTFV investigation, and there was no calculated rate in this review that could be assigned. The Panel remanded the *Final Results* to the Department, and directed the Department to assign to each of the Complainants a less adverse, or "second-tier" BIA rate of 18.20 percent, based on the "all others" rate established in the LTFV investigation.

Amendment to Final Results of Review

Because no further appeals have been filed and there is now a final and conclusive decision in the panel proceeding, we are amending the *Final Results*, pursuant to the Panel's order, and assigning the second-tier BIA rate of 18.20 percent to Aguaje, Guacatay, and Toro for the period April 1, 1991 through March 31, 1992:

| Company | Amended Final Results 1991–1992 |
|------------------------|---------------------------------|
| Rancho El Aguaje | 18.20% |
| Rancho Guacatay | 18.20% |
| Rancho El Toro | 18.20% |

Accordingly, the Department will determine, and U.S. Customs and Border Protection will assess, antidumping duties on all entries of subject merchandise from these three companies during the period April 1, 1991, through March 31, 1992, in accordance with these amended final results.

² We note that on page 81 of the *Panel Decision* the Panel misstates the Department's normal practice, in place at the time of the review, for assigning second-tier BIA rates. In *Antifriction Bearings from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992), cited by the Panel, we described second-tier BIA as "the higher of 1) the highest rate (including the ≥all others≥ rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review; or 2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin." (Emphasis added.)

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: June 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In May 2004, the Department of Commerce received three requests to conduct new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. Two of these requests were withdrawn. With respect to the third request, we have determined that it meets the statutory and regulatory requirements for the initiation of a new shipper review. In addition, we believe that there is sufficient information on the record to support the initiation of a middleman dumping inquiry involving the parties named in this request.

EFFECTIVE DATE: July 7, 2004.

FOR FURTHER INFORMATION CONTACT: Sochieta Moth or Mark Ross at (202) 482–5047 and (202) 482–4794, respectively, AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the People's Republic of China (PRC) was published on November 16, 1994. On May 11, 24, and 28, 2004, we received three timely requests, in accordance with 19 CFR 351.214(d), to conduct new shipper reviews of the antidumping duty order from Texing Trading Co., Ltd. (Texing Trading), Shandong Dongyue Produce Co., Ltd. (Dongyue), and Shandong Jining Jinshan Textile Co., Ltd. (Jining Jinshan), respectively. Texing Trading and Dongyue withdrew their requests for

¹ The Department found that the highest rate was aberrational, and therefore, was unsuitable for use as BIA.

new shipper reviews on June 9, 2004, and June 25, 2004, respectively.

On June 28, 2004, Jining Jinshan resubmitted its request for a new shipper review to correct certain deficiencies (e.g., illegible exhibits, missing English translations, etc.) that we identified in its submission and to provide additional documentation pertaining to the U.S. sale for which it requested a new shipper review.

Summary of Request for New Shipper Review

Pursuant to 19 CFR 351.214(b)(2)(i), Jining Jinshan certified that it did not export subject merchandise to the United States during the period of investigation (POI). Pursuant to 19 CFR 351.214(b)(2)(iii)(A), Jining Jinshan further certified that, since the initiation of the investigation, it has never been affiliated with any exporters or producers who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Jining Jinshan also certified that its export activities were not controlled by the central government.

In addition to the certifications described above, Jining Jinshan submitted documentation establishing the date of its sale to H & T Trading Co., Ltd. (H & T), an unaffiliated customer outside the PRC. Jining Jinshan also provided the volume and value of this shipment. Further, according to the documentation provided by Jining Jinshan, H & T then issued an invoice and resold the subject merchandise to the United States. Jining Jinshan also provided entry documentation establishing the date on which the subject merchandise entered into the United States, as well as the quantity and value of the merchandise that was resold by H & T to an unaffiliated U.S. purchaser.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d)(1), we are initiating a new shipper review for shipments of fresh garlic from the PRC grown and exported by Jining Jinshan. Therefore, until completion of the new shipper review, we will instruct U.S. Customs and Border Protection to allow, at the option of the importers, the posting of a bond or security in lieu of a cash deposit for entries of subject merchandise grown and exported from the PRC by Jining Jinshan.

Initiation of Middleman Dumping Inquiry

In cases in which the producer under review sells the subject merchandise to an unaffiliated party prior to its arrival in the U.S. with knowledge of the final destination, we normally use export price, the price at which the producer sells the subject merchandise to the first unaffiliated party, as the basis for U.S. price, pursuant to section 772(a) of the Act.

Based on the material that has been submitted on the record, it appears that the sale for review in the instant case is an export-price sale.

However, when an exporter sells its merchandise to an unaffiliated exporter, who resells its merchandise to the United States below acquisition and selling costs, it is possible that "middleman dumping" may exist. In such cases, the Department will calculate an antidumping duty margin based on a combination of the price paid by the middleman to the exporter, and the price paid to the middleman from the unaffiliated U.S. customer. Congress indicated in its legislative history that it intended for the Department to prevent middleman dumping from occurring, and the Courts have affirmed this application of the law as necessary to prevent the circumvention of the antidumping duty law. *See Tung Mung v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff'd* 354 F. 3d 1371 (Fed. Cir. 2004); S. Rep. No. 96-249 at 94 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 480; and H.R. Rep. No. 96-317 at 75 (1979) (both discussing the need to prevent middleman dumping).

Our analysis of the sales documentation submitted by Jining Jinshan in its request for a new shipper review appears, at first glance, to suggest that a middleman dumping scenario may exist in this case. Accordingly, the Department is initiating a middleman dumping inquiry and will be issuing middleman-oriented questionnaires consistent with our practice in similar past cases. *See Fuel Ethanol From Brazil: Final Determination of Sales at Less than Fair Value*, 51 FR 5572, 5573 (February 14, 1986); *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan*, 64 FR 30592 (June 8, 1999); and *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from Taiwan*, 64 FR 15493 (March 31, 1999).

The period of review is November 1, 2003, through April 30, 2004. *See* 19 CFR 351.214(g)(1)(i)(B). We intend to

issue the preliminary results of this review and inquiry no later than 180 days after the date on which this review is initiated, and the final results of this review and inquiry within 90 days after the date on which the preliminary results are issued. *See* section 751(a)(2)(B)(iv) of the Act.

Interested parties that need access to proprietary information in this new shipper review and middleman dumping inquiry should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 30, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

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DEPARTMENT OF COMMERCE

International Trade Administration

[(C-428-829); (C-421-809); (C-412-821)]

Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On February 5, 2004, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty (CVD) orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom for the period May 14, 2001, through December 31, 2002 (*see Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 69 FR 5498 (February 5, 2004) (*Preliminary Results*)). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rate for Urenco Deutschland GmbH of